Supreme Court, U.S.
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No. 98-

In the

Supreme Court of the United States

October Term, 1998

CLARK J. GEBMAN,

Petitioner,

Vs.

Honorable George Pataki, Governor of the State of New York, Mr. Bradford Race as Secretary to the Governor of the State of New York, The Office of Real Property Services, Mr. Thomas Griffen as Executive Director of the New York State Office of Real Property Services, Mr. Richard Sinnott as Counsel to New York State Office of Real Property Services, Honorable Dennis Vacco, Attorney General of the State of New York

Respondents,

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

CLARK J. GEBMAN,
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fo.

QUESTIONS PRESENTED

1. Should this Court grant certiorari to settle the question of whether, under the Freedom of the Press Clause of the First Amendment to the United States Constitution, and under the Due Process Clause of the Fourteenth Amendment to the United States Constitution a state retains the right to deny at first a member of the press; and at a later time; a registered exploratory candidate for the United States Senate (both being the same citizen) access to state data, that is otherwise made available to other members of the public. Data which the candidate now wishes to use to promote public awareness of property tax assessment practices, as a basis for promoting a new era of digital courage between government caretakers of data and the citizens who consent to be governed.

2. Should this Court grant certiorari to settle the question of whether, under the Freedom of the Press Clause of the First Amendment to the United States Constitution, and under the Due Process Clause of the Fourteenth Amendment to the United States Constitution can a state court can receive $245 from a citizen instituting one type of judicial proceeding, wherein a citizen seeks among other relief's the appointment of a special district attorney to investigate allegations of criminal conduct among personnel of the governors office; and then undeniably; without proper notice move the citizens petition to a court where the relief sought by the citizen could not properly be entertained because the court to where the case was moved to, statutorily does not have the jurisdiction to consider the citizens allegations or remedies sought.

LIST OF PARTIES

The following party was the appellant in the court below: Clark J. Gebman, and is the petitioner here. The appellees in the court below included Honorable George Pataki, Governor of the State of New York, Mr. Bradford Race as Secretary to the Governor of the State of New York, The Office of Real Property Services, Mr. Thomas Griffen as Executive Director of the New York State Office of Real Property Services, Mr. Richard Sinnott as Counsel to New York State Office of Real Property Services, Honorable Dennis Vacco, Attorney General of the State of New York. All are the respondents here.

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TABLE OF AUTHORITIES

1. The Constitution of the United States of America, First and Fourteenth Amendments.

2. 28 U.S.C. § 1257 (a).

3. 403 U.S. 713, 91 S.Ct. 2140 NEW YORK TIMES COMPANY, Petitioner, v. UNITED STATES.

4. Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70, 83 S.Ct. 631, 639, 9 L.Ed.2d 584 (1963)

5. Near v. Minnesota ex rel. Olson, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357 (1931)

6. Organization for a Better Austin v. Keefe, 402 U.S. 415, 419, 91 S.Ct. 1575, 1578, 29 L.Ed.2d 1 (1971).

7. New York Times Co. v. Sullivan, 376 U.S. 254, 269-- 270, 84 S.Ct. 710, 720--721, 11 L.Ed.2d 686.

8. Judge Laura Taylor Swain (97-21931)

9. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 72 S.Ct. 863, 96 L.Ed. 1153 (1952)

10. NYS CPLR 2214

11. NYS CPLR article 78

12. Morell v. Balasubramanian, 70 N.Y.2d 297, 300, 520 N.Y.S.2d 530, 514 N.E.2d 1101).

13. Ozanam Hall of Queens Nursing Home v. State of New York, 241 A.D.2d 670, 671, 661 N.Y.S.2d 54)

14. Matter of Gross v. Perales, 72 N.Y.2d 231, 532 N.Y.S.2d 68, 527 N.E.2d 1205).

15. Leif B. Pederson Inc. v. Weber, 128 A.D.2d 453, 513 N.Y.S.2d 146;

16. Halmar Distribs. v. Approved Mfg. Corp., 49 A.D.2d 841, 373 N.Y.S.2d 599;

17. Schwartz v. Hebrew Natl., 130 Misc.2d 942, 497 N.Y.S.2d 1000

OPINIONS BELOW

The DECISION of the New York State Court of Appeals on a motion for reargument is denied and entered on July 1, 1999, it is not known to be reported and is reproduced in the appendix at 1a.

The DECISION of the New York State Court of Appeals on a motion for leave to appeal to the Court of Appeals & c. is denied and entered on May 13, 1999 and is reported at 93 N.Y.2d 808, 713 N.E. 2d 417, 691 N.Y.S. 2d 382 and is reproduced in the appendix at 2a.

The DECISION AND ORDER ON MOTION of the Supreme Court – Appellate Division Third Judicial Department on a motion for reargument or, in the alternative, for permission to appeal to the Court of Appeals is denied and entered on March 4, 1999, it is not known to be reported and is reproduced in the appendix at 3a.

The MEMORANDUM AND ORDER of the Supreme Court – Appellate Division Third Judicial Department affirming the ORDER AND JUDGEMENT of the Supreme Court was decided and entered on December 17, 1998 and is reported at 681 N.Y.S. 2d 701, and is reprodu ced in the appendix at 4a.

The ORDER AND JUDGMENT of the Supreme Court was signed February 3, 1997 and entered on February 5, 1997 and was preceded by a January 3, 1997 decision, is not known to be reported and is reproduced in the appendix at 5a.

JURISDICTION

The decision of the New York State Court of Appeals was rendered and entered on May 13, 1999, a motion for rearguement was timely to the New York State Court of Appeals and was denied and entered on July 1, 1999. A copy of the order denying the motion for rearguement is reproduced at appendix 3a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment of the United States Constitution states:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourteenth Amendment, Section one; of the United States Constitution states:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In 403 U.S. 713, 91 S.Ct. 2140 NEW YORK TIMES COMPANY, Petitioner, v. UNITED STATES. The Supreme Court of the United States heard arguments on June 26, 1971 and decided on June 30, 1971 the following:

> Any system of prior restraints of expression bears heavy presumption against its constitutional validity, and Government carries heavy burden of showing justification for imposition of such a restraint.

This citizen claims status as a member of the "press" and claims that a certain order made by the Office of the Governor of New

York State on June 14, 1995; and subsequently ignored by the courts below; is functionally an act of restraint of press against this citizen. The Supreme Court continued:

> In cases in which the Government sought to enjoin newspapers from publishing contents of classified study on the "History of U. S. Decision-Making Process on Viet Nam Policy", Government failed to meet its burden of showing justification for imposition of such restraint.
>
> Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.' Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70, 83 S.Ct. 631, 639, 9 L.Ed.2d 584 (1963); see also Near v. Minnesota ex rel. Olson, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357 (1931). The Government 'thus carries a heavy burden of showing justification for the imposition of such a restraint.' Organization for a Better Austin v. Keefe, 402 U.S. 415, 419, 91 S.Ct. 1575, 1578, 29 L.Ed.2d 1 (1971).

There has been no showing justifying the restraint against this citizen by either the State of New York or the courts below. The opinion of Mr. Justice BLACK, with whom Mr. Justice DOUGLAS joins, concurring stated:

> I believe that every moment's continuance of the injunctions against these newspapers amounts to a flagrant, indefensible, and continuing violation of the First Amendment.
>
> ... Our Government was launched in 1789 with the adoption of the Constitution. The Bill of Rights, including the First Amendment, followed in 1791. Now, for the first time in the 182 years since the founding of the Republic, the federal courts are asked to hold that the First Amendment does not mean what it says, but rather means that

> the Government can halt the publication of current news of vital importance to the people of this country.

In this matter, the government issued an order, the effect of an injunction against this citizen to receive data from the state. Upon appeal of the executive order, the courts below ignored the central issue Freedom of the Press and in direct contravention of the state rules ruled on a motion to dismiss without proper notice, and placed the matter in a forum that would not be statutorily able to address the functional Freedom of the Press claim made by this citizen. As such, the action of New York, and the courts below has created a functional restraint of Press that is very similar to the New York Times v. U.S. The court continued:

> In seeking injunctions against these newspapers and in its presentation to the Court, the Executive Branch seems to have forgotten the essential purpose and history of the First Amendment. When the Constitution was adopted, many people strongly opposed it because the document contained no Bill of Rights to safeguard certain basic freedoms. [FN1] They especially feared that the new powers granted to a central government might be interpreted to permit the government to curtail freedom of religion, press, assembly, and speech. In response to an overwhelming public clamor, James Madison offered a series of amendments to satisfy citizens that these great liberties would remain safe and beyond the power of government to abridge. Madison proposed what later became the First Amendment in three parts, two of which are set out below, and one of which proclaimed: 'The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.' [FN2] The amendments were offered to curtail and restrict the

> general powers granted to the Executive, Legislative, and Judicial Branches two years before in the original Constitution. The Bill of Rights changed the original Constitution into a new charter under which no branch of government could abridge the people's freedoms of press, speech, religion, and assembly. Yet the Solicitor General argues and some members of the Court appear to agree that the general powers of the Government adopted in the original Constitution should be interpreted to limit and restrict the specific and emphatic guarantees of the Bill of Rights adopted later. I can imagine no greater perversion of history. Madison and the other Framers of the First Amendment, able men that they were, wrote in language they earnestly believed could never be misunderstood: 'Congress shall make no law * * * abridging the freedom * * * of the press * * *.' Both the history and language of the First Amendment support the view that the press must be left free to publish news, whatever the source, without censorship, injunctions, or prior restraints.

The power of this citizens new age software permitted public review of property taxation methodologies statewide, which have been hidden within voluminous and complex methodologies since 1858. It is precisely what the founding fathers had envisioned for a free and vibrant press as reaffirmed in New York Times v. U. S. when this court said:

> In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of

> government and inform the people. Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell. In my view, far from deserving condemnation for their courageous reporting, the New York Times, the Washington Post, and other newspapers should be commended for serving the purpose that the Founding Fathers saw so clearly. In revealing the workings of government that led to the Vietnam war, the newspapers nobly did precisely that which the Founders hoped and trusted they would do....

In applying what can only be termed a debatable jurisdictional rule, without notice to cure, the executive branch of New York State Government together with the New York Judiciary seeks to convert this effort to be restored the status of the press as envisioned by the New York State Legislature under an Article 78 proceeding. This proceeding required that this citizen pay $245 to commence, and clearing marking the Request for Judicial Intervention that the proceeding was an Article 78 proceeding. Yet the court below converted on a motion made without proper notice this matter to a claim for damages, referring this matter to a forum where only the claim for damages can be heard. This act by the executive branch endorsed by the judicial branch is not unlike the New York Times v. U.S. if one were to replace the words "**national security**" with "**a highly dubious technicality brought on by motion without proper notice**" when the court observed:

> In other words, we are asked to hold that despite the First Amendment's emphatic command, the Executive Branch, the Congress, and the Judiciary can make laws enjoining publication of current news and abridging freedom of the press in the name of '**national security**.' The Government

> does not even attempt to rely on any act of Congress. Instead it makes the bold and dangerously farreaching contention that the courts should take it upon themselves to 'make' a law abridging freedom of the press in the name of equity, presidential power and national security, even when the representatives of the people in Congress have adhered to the command of the First Amendment and refused to make such a law.

The actions of the New York Governor in the exercise of the offices inherent power, can not be considered immune from the following observation of this court in New York Times v. U.S.

> ...To find that the President has 'inherent power' to halt the publication of news by resort to the courts would wipe out the First Amendment and destroy the fundamental liberty and security of the very people the Government hopes to make 'secure.' No one can read the history of the adoption of the First Amendment without being convinced beyond any doubt that it was injunctions like those sought here that Madison and his collaborators intended to outlaw in this Nation for all time.
>
> ...The Framers of the First Amendment, fully aware of both the need to defend a new nation and the abuses of the English and Colonial Governments, sought to give this new society strength and security by providing that freedom of speech, press, religion, and assembly should not be abridged. This thought was eloquently expressed in 1937 by Mr. Chief Justice Hughes--great man and great Chief Justice that he was--when the Court held a man could not be punished for attending a meeting run by Communists.
>
> 'The greater the importance of safeguarding the community from incitements to the overthrow of

> our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.

There is wide agreement among the court in the matter of New York Times v. U.S. Mr. Justice DOUGLAS, with whom Mr. Justice BLACK joins, concurring that:

> It should be noted at the outset that the First Amendment provides that 'Congress shall make no law * * * abridging the freedom of speech, or of the press.' That leaves, in my view, no room for governmental restraint on the press.
>
> As we stated only the other day in Organization for a Better Austin v. Keefe, 402 U.S. 415, 419, 91 S.Ct. 1575, 1578, 29 L.Ed.2d 1 '(a)ny prior restraint on expression comes to this Court with a 'heavy presumption' against its constitutional validity.'
>
> The dominant purpose of the First Amendment was to prohibit the widespread practice of governmental suppression of embarrassing information. It is common knowledge that the First Amendment was adopted against the widespread use of the common law of seditious libel to punish the dissemination of material that is embarrassing to the powers-that-be. ...

Clearly the proven inequities in New York property taxation, long held by the New York Court of Appeals, and the nature of the act

that after one-hundred and thirty-seven years of complex and concealed data administration that due to the wonders of technology it can be revealed on a CD-ROM and made intelligible for common public understanding is no less a watershed event that the public understanding the Viet Nam war may be bad. However, due to the complex nature of property taxation, media outlets have been generally incapable of understanding this specialty. This does not detract from the fact that one day soon, the public will realize that democracy requires our political institutions to have digital courage, to this end this matter may one day exceed the public outcry observed by the court in New York Times v. U.S. as observed by Mr Justice Black and Mr Justice Douglas which reads as follows:

> The present cases will, I think, go down in history as the most dramatic illustration of that principle. A debate of large proportions goes on in the Nation over our posture in Vietnam. That debate antedated the disclosure of the contents of the present documents. The latter are highly relevant to the debate in progress.
>
> Secrecy in government is fundamentally anti-democratic, perpetuating bureaucratic errors. Open debate and discussion of public issues are vital to our national health. On public questions there should be 'uninhibited, robust, and wide-open' debate. New York Times Co. v. Sullivan, 376 U.S. 254, 269-- 270, 84 S.Ct. 710, 720--721, 11 L.Ed.2d 686.

This citizen has waited since Flag Day, June 14, 1995 to be restored freedoms. This matter in part caused this citizen to declare personal bankruptcy, and it was before Judge Laura Taylor Swain (97-21931) on November 12, 1998 I informed her that:

> "Gebman wishes to exercise his right to finance an exploratory campaign for the Office of U.S. Senator from the State of New York from the sale of public information enhanced with Gebman's

> work product. The public information is otherwise available under the Freedom of Information laws of New York. Yet in this instance the State of New York through the illegal acts of high ranking state officials refuses to give Gebman access to the information to which Gebman is entitled and thus impeding Gebman's ability to pursue the elective office of U.S. Senator from the State of New York. These acts are in violation of the U.S. Constitution and numerous federal and state laws."

It is worthy to mention this November 12, 1998 revelation was made prior to the celebrity status that this campaign now enjoys in the popular media. For the record, I notified the secretary of the senate and each senator of my exploratory status on April 16, 1999 and this notice was marked received by the Secretary to the United States Senate on April 17, 1999. The lower courts were also apprised of this fact on April 26, 1999. This leads to the necessity of an immediate resolution of this matter by this court. In New York Times v. U.S. this court was confronted with the issue of expediency, some of the comments by members of the court included those of Mr. Justice Douglas and Mr Justice Black when they stated:

> The stays is these cases that have been in effect for more than a week constitute a flouting of the principles of the First Amendment as interpreted in Near v. Minnesota ex rel. Olson.

Mr. Justice MARSHALL, concurring stated in New York Times v. U.S.:

> The Government contends that the only issue in these cases is whether in a suit by the United States, 'the First Amendment bars a court from prohibiting a newspaper from publishing material whose disclosure would pose a 'grave and immediate danger to the security of the United

States." Brief for the United States 7. With all due respect, I believe the ultimate issue in this case is even more basic than the one posed by the Solicitor General. The issue is whether this Court or the Congress has the power to make law.

It would, however, be utterly inconsistent with the concept of separation of powers for this Court to use its power of contempt to prevent behavior that Congress has specifically declined to prohibit. There would be a similar damage to the basic concept of these co-equal branches of Government if when the Executive Branch has adequate authority granted by Congress to protect 'national security' it can choose instead to invoke the contempt power of a court to enjoin the threatened conduct. The Constitution provides that Congress shall make laws, the President execute laws, and courts interpret laws. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 72 S.Ct. 863, 96 L.Ed. 1153 (1952). It did not provide for government by injunction in which the courts and the Executive Branch can 'make law' without regard to the action of Congress. It may be more convenient for the Executive Branch if it need only convince a judge to prohibit conduct rather than ask the Congress to pass a law, and it may be more convenient to enforce a contempt order than to seek a criminal conviction in a jury trial. Moreover, it may be considered politically wise to get a court to share the responsibility for arresting those who the Executive Branch has probable cause to believe are violating the law. But convenience and political considerations of the moment do not justify a basic departure from the principles of our system of government.

Mr. Chief Justice BURGER, dissenting in New York Times v. U.S. stated:

> So clear are the constitutional limitations on prior restraint against expression, that from the time of Near v. Minnesota ex rel. Olson, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357 (1931), until recently in Organization for a Better Austin v. Keefe, 402 U.S. 415, 91 S.Ct. 1575, 29 L.Ed.2d 1 (1971), we have had little occasion to be concerned with cases involving prior restraints against news reporting on matters of public interest. There is, therefore, little variation among the members of the Court in terms of resistance to prior restraints against publication. Adherence to this basic constitutional principle, however, does not make these cases simple ones. In these cases, the imperative of a free and unfettered press comes into collision with another imperative, the effective functioning of a complex modern government and specifically the effective exercise of certain constitutional powers of the Executive. Only those who view the First Amendment as an absolute in all circumstances--a view I respect, but reject--can find such cases as these to be simple or easy.

In this matter, there have been no response to the freedom of press claims made Gebman from the state of New York. There has been virtually no opportunity to create a record of substance to addrees the underlying issues. This is not unlike the following observations of Mr. Chief Justice Burger in New York Times v. U.S. when he stated:

> These cases are not simple for another and more immediate reason. We do not know the facts of the cases. No District Judge knew all the facts. No Court of Appeals Judge knew all the facts. No member of this Court knows all the facts.
>
> Why are we in this posture, in which only those judges to whom the First Amendment is absolute

> and permits of no restraint in any circumstances or for any reason, are really in a position to act?
>
> I suggest we are in this posture because these cases have been conducted in unseemly haste. Mr. Justice HARLAN covers the chronology of events demonstrating the hectic pressures under which these cases have been processed and I need not restate them. The prompt settling of these cases reflects our universal abhorrence of prior restraint. But prompt judicial action does not mean unjudicial haste.
>
> Here, moreover, the frenetic haste is due in large part to the manner in which the Times proceeded from the date it obtained the purloined documents. It seems reasonably clear now that the haste precluded reasonable and deliberate judicial treatment of these cases and was not warranted. The precipitate action of this Court aborting trials not yet completed is not the kind of judicial conduct that ought to attend the disposition of a great issue.

In this case Gebman's haste is not to serve a private interest, but as a method to create public understanding of this great issue that confronts the meaning that will confront the true meaning of our democracy in the century to come. Is digital access and the public discussion that will flow on its importance or usefulness to our society of equal importance in the United States Supreme Court view to the public discussion on the Viet Nam war that emanated from the publishing of the Pentagon papers? This question and this citizens ability to have a hearing before this court, will set the course for public confidence in this court and these newly enacted Certiorari procedures well into the next century.

As for issues pertaining to the Fourteenth Amendment, it was well established in Near v Minnesota 283 U.S. 697, that one denied U.S. Constitution First Amendment rights is inherently denied Fourteenth Amendment rights of the U.S. Constitution.

However, the issue does not stop with the direct linkages between the First and Fourteenth Amendments of the U.S. Constitution. The lack of due process started when the motion was granted despite the fact that it is undisputed in the record; that notice by the State of New York on this citizen of the prevailing motion was defective as it was served by mail on October 28, 1996 and stated a hearing date of October 30, 1996 which never occurred, there being no hearing on the motion by any court to this day.

The only appearance made by the parties in Supreme Court occurred on October 25, 1996. In this hearing the record below page 162 shows Gebman stated:

> "Before Justice Bradley on October 25, 1996: The petitioner in response to the claim from the Assistant Attorney General that the matter was adjourned on consent stated that:
>
> I never consented to an adjournment, Assistant Attorney General Finnegan called me and requested an adjournment and I informed her that I would do so only if she consented to the signing of the Temporary Restraining Order found in the Order To Show Cause, she refused such offer and proceeded to inform me that she intended to contact the court and request an adjournment.
>
> I immediately called the court and left a message for the law clerk of Judge Bradley to contact me, stating that the opposition would be contacting the court seeking an adjournment to which I was opposed. My phone call to the court was not returned, and in the interim Assistant Attorney General Finnegan called me to say that the matter was postponed.
>
> It was at this time in open court the law clerk to the right of Judge Bradley announced that his instructions to Assistant Attorney General Finnegan was that an adjournment was to occur

only on consent of the petitioner. In open court the Assistant Attorney General present announced that Assistant Attorney General Finnegan was on vacation and that he was informed that the petitioner granted consent which was not the case. It was at this point that the court announced the matter was not adjourned and ordered the respondent(s) to submit all papers in a matter of days and that a decision would be rendered based on the papers submitted.

The petitioner expecting the opportunity to verbally expand on the urgent need to be restored with constitutional rights, was lectured by the court that the busy calendar prohibited immediate review and inquired whether or not the petitioner thought the court should read the matter that Saturday night (or to the effect of such) the petitioner responded:

My constitutional rights need to be restored to access FOIL data as the respondents were destroying my family, finances, and name, and that I only sought the restoration of my rights to FOIL in the same matter as this court had found in American Society For The Prevention Of Cruelty To Animals v. the State some years earlier.

I would have preferred to discuss the matter with the clerk of the court rather than with this letter. However, due to the fact that the clerk of the court has failed to return five phone calls made to the court since late October, I am sure that a letter is the most effective means of communicating with the court."

The record below shows that this citizen evoked constitutional considerations in no less than thirty locations is documents directed to the New York States Court of Appeals. Including

within the Verified Affidavitt In Support of Motion for Rearguement, wherein it was stated on page 1:

> "2. Certain acts of the State of New York and certain state actors, at times acting under color of official duty but exceeding their authority, have, as stated in the moving papers; violated my first, fourth and fourteenth amendment rights that are granted to all citizens from the United States Constitution.
>
> 3. Certain acts have also violated my rights as delineated under Article I section 1, 8, 11, 12; Article IV section 8, of the New York State Constitution. And, the State of New York and these same State Actors have performed certain acts where my rights under Articles two and three of the New York State Civil Rights Laws among other laws and statutes of a civil nature; and numerous other acts have been committed against me which are classified as criminal in nature."

In the Brief on Appeal and Reply Brief on Appeal both before the Third Department of the New York Supreme Court this citizen stated on page 12 of Brief on Appeal:

> "The petitioner-appellant is entitled to have his allegations investigated. The New York Public Officers Law defines that information is to be provided without condition. The Constitutions of The United States of America and the State of New York each require that the petitioner be afforded equal treatment under the law and this has not been afforded to the petitioner."

In the Reply Brief before the Third Department of the New York Supreme Court this citizen stated on page 8:

> "The CPLR 2214 does include an exception to the rules found under CPLR 2214: <u>Only papers</u>

served in accordance with the provisions of this rule shall be read in support of, or in opposition to, the motion, unless the court for good cause shall otherwise direct.

The petitioner knows of no allegation made by the Attorney General that good cause existed for the unilateral granting of Motion to dismiss without notice or a hearing. The record contains no reference to a judicial finding of good cause to ignore the intent of the legislature as defined in CPLR 2214.

Good cause does not mean due process inherent in notice, hearing, and motion to dismiss merits nay be unilaterally waived without notice to the petitioner. Any attempt to imply that good cause can undermine the due process provisions of the New York State and the United States Constitutions is not conceivable under the circumstances enumerated in the record under appeal."

STATEMENT OF THE CASE

The equalization of property tax methodologies among assessing districts that share common school districts; by state government in New York has been practiced in its variant forms since 1858. This equalization process has created the financial foundation and maintenance of the state's primary and secondary educational system by providing state oversight pertaining to the collection of property taxation at the local level, and acts in some measure as a basis for state funding to local school districts. Other concomitant functions of state equalization pertain to special

district taxation for special property uses such as utilities and the estimation of government jurisdiction total property value for the purpose of maintaining the state constitutional debt limits imposed on governmental jurisdictions.

The function of state equalization remains part of the New York State Executive Department under the direct apices of the Office of the New York State Governor through a state board, which is appointed by the Governor. Access provided to others and not to the Petitioner-Appellant (Gebman) to the data and methodologies used by the state board (formerly called the State Board of Equalization and Assessment (SBEA) currently called the Office of Real Property Services - ORPS) is the fundamental issue at bar before the court.

In 1994, Gebman acting in affiliation with NYNET, Inc. published certain records of ORPS (at the time the board was named SBEA) on CD-ROM using a runtime version of Microsoft-Access. Three technologically advanced events occurred in 1994 that permitted Gebman to offer this CD-ROM NYNET named VALNET by NYNET, Inc.

The first of these three events was the release by the Microsoft Corporation (Microsoft) of software named "Access Runtime Version". This Runtime Version permitted a purchaser to customize Access, which Microsoft included as part of its "Office" suite software in 1994, and permitted an "Access Runtime Version" purchaser to include a customized version of Access with any selected data set. The customization of the "Access Runtime" a viewer (now commonly called a browser) with a data set permitted a developer to combine data with a customized point and click approach to viewing data.

In exchange for a "Access Runtime License" expense of less than $500 a developer (Gebman) could develop a data base browser with no royalty or additional license expense. This

permitted users without the Office version of Access to view the data without purchasing Access. Thus, perhaps for the first time developers in the marketplace could communicate new ways to view data for an affordable and unprecedented low price.

The second technological event occurring in 1994 was the emergence of the CD-ROM, this made the transfer and copying of the "Access Runtime Version" and data set a commercial possibility.

The third technological event occurring in 1994 was the creation of software compression technology, licensed by Gebman that permitted Gebman to expand the limits of the capacity of a CD-ROM from 650 MB to 4,000 MB (a capacity similar to today's emerging DVD disks, which is expected to grow substantially).

Gebman published five versions of VALNET, October 1994, January, February, March 1995 and January 1996; offering up to 1.5 million records, containing nearing 1200MB on a single disk along with a specially developed version of Access which was named VALNET.

Approximately 1,000 individuals utilized VALNET, the professions that were typically users were to name a few appraisers, bankers, attorneys, brokers; Town Assessors and even agencies of the federal government were customers of this media created by Gebman. (Many State Agencies expressed an interest in purchasing VALNET but were not permitted to do so.

Many users opted to copy VALNET data to their own Access application and further invented their own viewing methodologies. This was particularly true of the property tax-appeal profession, who astutely observed, that inconsistencies in the ratio of sales price of vacant land to an

assessment of equally situated land would indicate a prime opportunity to earn money as an agent seeking to lower a property owners land taxes.

In the fourth quarter of 1994, the state expressed great interest in assisting Gebman and NYNET, Inc. In the first quarter of 1995 the state made a contract with Gebman for specific performance and Gebman alleges the state failed to honor the contract.

The state has claimed Gebman and or NYNET, Inc. is in arrears to the state to data allegedly ordered and received and has used this allegation as a basis to deny Gebman and NYNET, Inc. data that has been made available to others.

Gebman as a representative of NYNET, Inc. contacted the Governor of the State and pled for relief from the unfair position of ORPS against NYNET, Inc. and Gebman personally.

The Secretary to the Governor of New York responded at the Governors request on June 14, 1995. The response indicated that the data that Gebman and NYNET, Inc. contracted for in January / February 1995 was not going to be made available as a matter of state policy against the release of such valuable data to private enterprise. The Governor additionally adopted the position of ORPS that Gebman and/or NYNET, Inc. was not to receive any more data until an alleged past due balance was paid.

Gebman has maintained in numerous court documents that the data contracted for with the state in January / February 1995 was not sent to Gebman or NYNET, Inc. In addition the charges for data that was received by Gebman or NYNET, Inc. (some being paid) are not supported under the state constitution. This is because the State Administrative

Procedures Act (SAPA) requires certain public notice for charges by the state for various services, and the data "service" received by Gebman was not posted as a service under which a fee would be charged as required under the state constitution and SAPA.

In all cases the requests for data made by Gebman / NYNET, Inc. were made under the auspices of the State Public Officers Law (Freedom of Information Law, FOIL). The charges presented by the state to Gebman NYNET, Inc. have at all times appeared to be in excess of what is permitted under the state FOIL law.

Following the early May pleading by Gebman / NYNET, Inc. to the Governor Gebman initiated a suit in the State Court of Claims, seeking damages for the taxpayers of the state, which was later requested by the court in the early fall. Shortly afterwards ORPS asked Gebman / NYNET, Inc. to participate in an RFP to consider being the states partner. Gebman / NYNET, Inc. provided the state with approximately 100 pages of explanation for a state network that would open the state data files to the public.

In addition Gebman / NYNET, Inc. was successful in gaining the assistance of several major corporations we were willing to partner with Gebman and NYNET, Inc. for the state project. After the time for appeal of the Gebman / NYNET, Inc. legal proceedings had lapsed the state informed Gebman / NYNET, Inc that its RFP process was suspended as the state had decided to pursue new digital opportunities on its own.

Gebman and NYNET, Inc. between late 1995 and June 1996 jointly pursued over forty distinctly different attempts to enlist the aid of various state officials, elected officials of

both the democratic and republican parties as well as media outlets in a failed attempt to enlist support.

At one point in early 1996 Gebman / NYNET, Inc. was contacted at Gebman's home by a California data provider who annually receives data from the state. He incredulously informed Gebman / NYNET, Inc. that the state asked him to sign an affidavit that he would not provide the data to Gebman / NYNET, Inc.; he claimed to have been a litigant in many FOIA lawsuits and said he never saw such an injustice. As such, he provided the data to Gebman / NYNET, Inc., which provided Gebman / NYNET, Inc. the opportunity to publish in early 1996 for the last time.

In June 1996 Gebman notified the Governor and others to cease and desist the state practice where the names Gebman and NYNET, Inc. were used in response to any inquiry the state received for data that would be of interest to Gebman or NYNET, Inc. As a condition for receiving data from New York State; both in state and out of state parties requesting data under FOIL were required to sign an affidavit under penalties of perjury. The affidavit affirmed that the recipients of state data under FOIL would not provide the data to either Gebman or NYNET, Inc.

Having confirmed the furtherance of what appears to be anti-trust violations not only of the states Donnelley Act, but of the federal Sherman Act as well. This was verified when a California attorney received the above stated state response conspiring to keep the data from Gebman / NYNET, Inc. well after the thirty day notice to the governor in June 1996. Gebman / NYNET, Inc. appealed the July 1996 refusal to provide data and initiated an Article 78 proceeding in October 1996.

On October 11, 1996 Gebman appeared before Judge Keegan seeking a temporary restraining order via an order to show cause, and filed a verified petition and seeking seven injunctive relief's. The Order to Show Cause was signed but the temporary restraining portion of the Order to Show cause was stricken by Judge Keegan. Under the supervision of Judge Keegan service was admitted by some of the parties named on the 11th in open court, and service on others was served timely on the 18th of October. The matter was set for hearing on October 25.

A few days prior to the scheduled appearance on the 25th of October, 1996, Maureen Finnegan[1] called Gebman and attempted to postpone the October 25th hearing, the facts surrounding the attempt by Finnegan to delay and the statements made in open court by Gebman and the judge were memorialized in the January 10, 1997 letter which was admitted into the record below.

Among the statements made to Judge Bradley, included a plea for the restoration of my constitutional rights to FOIL data in the same manner this court had found in American

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[1] It would later be revealed to Gebman via the July 18, 1999 New York Post, Ms. Finnegan served as an aide to Governor Pataki when he was Senator and she is the sister of Michael Finnegan. It was further reported the 26 year old Finnegan left the employ of the attorney general shortly after Judge Bradley's ruling against Gebman. Ms. Finnegan joined the law firm of Ruberti, Girvin & Ferlazo after leaving the New York Attorney Generals office. The Post reported Ms. Finnegan joined the firm after the firm was awarded "a $1.1 million no-bid contract to a Republican-connected law firm tied to the governor's former chief counsel, The Post has learned. Two of the partners in the firm, Ruberti, Girvin & Ferlazo of Albany, are friends and college associates of Michael Finnegan, a long time intimate who served as the governor's counsel when the three-year contract was awarded in September 1996,...administration insiders said Finnegan, as the governor's chief counsel, would have been in a position to approve or kill the legal contract...

Society For The Prevention of Cruelty To Animals v. the State some years earlier. These statements were memorialized in the above noted January 10, 1997 letter, which was admitted into the record below.

The very same letter concludes with the representation that Gebman made five attempts to reach the court between late October and the date of the letter. While it is clear from Gebman's January 10, 1997 recap of the October 25, 1996 proceeding that the judge ordered respondent(s) to submit all papers in a matter of days and that a decision would be based on papers submitted.

The papers of Gebman before both Appellate Courts clearly challenge the right of the court to rule on a motion which was defective, having no return date; what is useful to note is that Gebman was obviously confused and sought the attention of the court as to the meaning of a motion made with no notice of a hearing that never occurred. Yet the court never responded except to rule on a motion which was not properly before it because the motion to dismiss was made with defective notice.

While it is clear, the verified petition is lacking a wherefore clause, it has been held that in the absence of details motion for injunctive relief can precede final complaints as such was the case in this matter.

Subsequent to the October 11, 1996 hearing and prior to the October 25, 1996 hearing Gebman became increasingly suspicious as to why a siting Governor would risk so much prestige and credibility in fighting the revelation of data which could be used to make the states property tax system more far, and better understood. Gebman concluded the governor must be hiding something of great importance to him personally.

It was between the hearings that Gebman unearthed in Westchester County the facts that a month earlier, in September 1996 at the same time Mike Finnegan is alleged by the Post sources to have arranged a $1.1 no bid contract to a firm that would soon after hire his sister[2], it was decided by a Peekskill administrator who a month later would go to the Pataki administration as the assistant commissioner of the state GSA; to recycle a subdivision Environmental Assessment Form for Pataki property among others, in which Micheal Finnegan had clear lied on several years earlier.

This local official also decided to ask the local board to approve the application without a public hearing in violation of the law. As it turns out this is the same property matter in which Pataki himself committed a class e felony in December 1993 permitted an ability to recycle the fraudulent EAF (Environmental Assessment Form) completed by Finnegan. The record demonstrates that Pataki and partners were able to save over $100,000 in property taxation alone in the years 1996 and 1997 by benefiting from the failure of the assessor to not change the taxable status on newly subdivided land, sold as lots.

Thus when Pataki sold a portion of his family farm for $480,000 and the reported and carried taxes for two years following was based on an assessment of $2,700 a highly unusual fact that users of VALNET would become aware of with a moderate level of skill. Thus, the inherent question emerges did the state action against Gebman result from state policy or greed of Pataki? Moreover does Gebman have a right to know the answer to this question?

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[2] Opposing counsel who appeared before Judge Bradley with the defective motion to dismiss.

It should be noted the Governor vetoed property tax reform in his county during this period as well. It should be further noted the transfer dates of Pataki land going back to either 1992 or 1993 because a confused in the public record, this is rumored to occur to benefit Patakis placement of his father in a nursing home for indigent firemen.

Finally the governors use of a 1031 exchange is according to sources patently illegal because it is alleged the governor used an improper intermediary and was a dealer, because of the length of his ownership of land and the long term and documented intention to sell the land makes the federal 1031 exchange illegal.

Given the nature of the allegation made in the record and the judicial structure of the New York judiciary, and the fact that appellate jurists and the court of appeals all operate best with the acquiescence of the governor for budget and appointment of each member, it is clear that Gebman has little chance of receiving due process under these circumstances from the State judiciary, as long as the Governor of New York yields so much power over the judiciary.

It should also be noted Gebman completed a Request For Judicial Intervention Form and paid a $245 fee, noting the Nature of Judicial Intervention was for relief sought TRO, Preliminary Injunctions and that the Nature of Action or Proceeding was a Special Proceeding Article 78. This form is part of the record.

Therefore a process was paid for, considerable evidence exists in the record below to document every allegation named herein, yet this citizen still seeks Constitutional rights that remain long denied.

REASONS FOR GRANTING THE PETITION

If we are to remain a free society in the "Internet" era Americans will soon realize government practices of the past century will no longer work in the new century. Government challenged by the new realities of a digital society, will not win against the commercial inevitability of everything digital. The rewards commercially in our capitalistic society are too great for government to repel a new era of digital courage in government.

Thus, at what cost to the dignity of citizens, and to our cherished institutions, will be had before the maintainers of the conduct and character of our government will realize that there is no escape from the brutal truth that the digital era thrusts on government and its related institutions.

No doubt the political chicanery will die hard, but is this court willing to risk not granting Certiorari in this matter, to then suffer though the next decade as the videos and other popular methods of communication ridicule a decision to ignore this plea? And then creates momentum for new methods of public redress that in the past the court has discouraged?

This Court and its leadership conclude this session in a manner unlike nearly all others. The Chief Justice has brought great acclaim to the court in his distinguished service in the United States Senate. Despite this, the public will at some point grow to understand the importance of this application to this great institution. The best reason for granting a writ is not that I hurt, but rather the biggest danger to the court will be the loss of the trust of the American people. If America is disappointed by the guardians of justice as was the case recently when the New York Judiciary failed miserably to recognize the greatness of America lies in the courage of those we trust to do the job and not those who pander to temporal political interest that only serve to diminish our great democracy.

IMMEDIATE HEARING

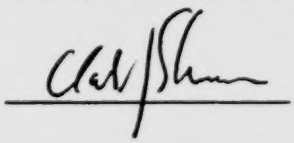
Given the profound importance of a free press to a free society and an a Congress elected free of political oppression by state government against a U.S. Senate Exploratory Candidate, an early determination granting the Motions sought before the lower court, or remand to the New York State Court of Appeals is sought.

This citizens right to be free and act as a member of the press, and now as an exploratory candidate; has suffered from political oppression since Flag Day 1995, June 14, 1995. How many more national holidays must pass before this citizen can be freed from the political oppression of New York State government and leading state officials?

Such irreparable injuries should not continue absent a review by this court.

CONCLUSION

The decision below is patently erroneous. It permits the government of New York State to continue prior restraint. The present petition for a writ of certiorari should therefore be granted.



Clark J. Gebman

Pro se

783 East Tenth St.

Brooklyn, NY 11230

718-434-3414

State of New York

County of Kings

Clark J. Gebman being duly sworn, says he is the Petitioner in this action. I have read the foregoing and know the contents thereof, the same is true of my own knowledge.

Clark J. Gebman

Sworn to before me

September 29, 1999

ALAN M. KASSOF
NOTARY PUBLIC, STATE OF NEW YORK
NO. 24-4982404
QUALIFIED IN KINGS COUNTY
COMMISSION EXPIRES 6/3/01

Appendix

STATE OF NEW YORK,

COURT OF APPEALS

At a session of the Court, held at Court of

Appeals Hall in the City of Albany

On the first day

Of July 1999

Present, Hon. Judith S. Kaye, Chief Judge, presiding.

3-10 Mo. No. 815

In the Matter of Clark J. Gebman,

Appellant,

v.

George Pataki, as Governor of the

State of New York, et al.,

Respondents.

A motion for reargument of motion for leave to appeal to Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein, papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion be and the same hereby is denied.

STATE OF NEW YORK

COURT OF APPEALS

3-10 Mo. No. 815

In the Matter of Clark J. Gebman,

Appellant,

v.

George Pataki, as Governor of the

State of New York, et al.,

Respondents.

ORDER

Entered July 01, 1999

STATE OF NEW YORK,

COURT OF APPEALS

At a session of the Court, held at Court of

Appeals Hall in the City of Albany

On the thirteenth day

Of May 1999

Present, Hon. Judith S. Kaye, Chief Judge, presiding.

3-10 Mo. No. 488

In the Matter of Clark J. Gebman,

Appellant,

v.

George Pataki, as Governor of the

State of New York, et al.,

Respondents.

A motion for leave to appeal to the Court of Appeals & c. in the above cause having heretofore been made upon the part of the appellant herein, papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion be and the same hereby is denied. **S/_____**

Stuart M. Cohen

Clerk of the Court

Supreme Court – Appellate Divison

Third Judicial Department

Decided and Entered: March 4, 1999 **Case # 81984**

DECISION AND ORDER

ON MOTION

In the Matter of CLARK J. GEBMAN,

Appellant,

v.

GEORGE PATAKI, as

Governor of the State of New York, et al.,

Respondents.

Motion for reargument or, in the alternative, for permission to appeal to Court of Appeals.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

Ordered that the motion is denied, without costs.

MIKOLL, J.P., MERCURE, YESAWICH JR. AND PETERS, JJ., concur. **ENTER:**

/S_____

Michael J. Novack

Clerk of the Court

NEW YORK SUPREME COURT
THIRD DEPARTMENT

Decided and Entered: December 17, 1998 81984

MEMORANDUM AND ORDER

IN THE MATTER OF

Clark J. Gebman, New York City, appellant in person.

Dennis C. Vacco, Attorney-General (Lew A. Millenbach of counsel), Albany, for respondents.

Before MIKOLL, J.P., MERCURE, WHITE, YESAWICH and PETERS, JJ.

PETERS, Justice.

Appeal from a judgment of the Supreme Court (Bradley, J.), entered February 5, 1997 in Albany County, which, in a proceeding pursuant to CPLR article 78, granted respondents' motion to dismiss the petition for lack of jurisdiction.

Petitioner commenced this proceeding by filing an order to show cause which included a verified petition. The petition alleges that the Office of Real Property Services (hereinafter ORPS) wrongfully denied his request made pursuant to the Freedom of Information Law (Public Officers Law art. 6) (hereinafter FOIL) seeking, inter alia, access to information involving the computer system and programs used and developed by ORPS. Petitioner's pro se petition listed 23 causes of action, each of which alleged that as a result of respondents' failure to disclose the information, petitioner was damaged in the amount of $10 million. In the order to show cause, however, petitioner also requested relief in the form of a temporary restraining order and preliminary injunction which sought, inter alia, to prevent respondents from refusing to release real property sales and inventory data throughout the State as well as information pertaining to ORPS' computer system.

Petitioner's request for a temporary restraining order was denied by Supreme Court (Keegan, J.) and a return date on the petition was set. On such date, both parties appeared and petitioner filed a second order to show cause seeking the same equitable relief and what appeared to be a motion for preliminary injunctive relief. Supreme Court refused to sign the order to show cause and respondents thereafter moved to dismiss the proceeding, contending that the court lacked subject matter jurisdiction since petitioner, in its verified petition, solely sought monetary damages against the State.

Acknowledging that petitioner sought certain forms of preliminary injunctive relief and that the underpinnings of the various causes of action seeking monetary damages are derived from respondents' failure to comply with petitioner's requests under FOIL, Supreme Court (Bradley, J.) nonetheless granted respondents' motion due to petitioner's sole request for monetary damages. Dismissing the action without prejudice to renewal in the Court of Claims and upon the further denial of petitioner's request for reconsideration, this appeal ensued.

[1][2] We affirm. "[A]ctions against State officers acting in their official capacity in the exercise of governmental functions are deemed to be, in essence, claims against the State and, therefore, suable only in the Court of Claims" (Morell v. Balasubramanian, 70 N.Y.2d 297, 300, 520 N.Y.S.2d 530, 514 N.E.2d 1101). While the Court of Claims may, in its determination of claims seeking monetary damages, apply equitable considerations and, in connection therewith, grant incidental equitable relief (see, Ozanam Hall of Queens Nursing Home v. State of New York, 241 A.D.2d 670, 671, 661 N.Y.S.2d 54), it has no jurisdiction to grant strictly equitable relief (id.). Hence, it becomes relevant to determine whether the essential nature of the claim is the recovery of monetary damages or whether monetary relief is simply incidental to the primary claim (see, Matter of Gross v. Perales, 72 N.Y.2d 231, 532 N.Y.S.2d 68, 527 N.E.2d 1205).

[3][4] Although not explicitly stated, we find Supreme Court to

have clearly acknowledged the outstanding motion for preliminary injunctive relief and to have appropriately denied it since the action before it never requested a permanent injunction. Having so limited its requested relief to that of monetary damages (see, Leif B. Pederson Inc. v. Weber, 128 A.D.2d 453, 513 N.Y.S.2d 146; Halmar Distribs. v. Approved Mfg. Corp., 49 A.D.2d 841, 373 N.Y.S.2d 599; Schwartz v. Hebrew Natl., 130 Misc.2d 942, 497 N.Y.S.2d 1000) and upon our finding that the monetary claims were not incidental to the denial of the FOIL request (see, Matter of Gross v. Perales, supra), the determination was, in all respects, proper.

ORDERED that the judgment is affirmed, without costs.

MIKOLL, J.P., and MERCURE, WHITE and YESAWICH, JJ., concur.

5 a 1

At a Special Term of the Supreme Court, held in and for the County of Albany, at the Albany County Courthouse, Albany, New York on October 25, 1996.

Present: Honorable VINCENT G. BRADLEY
Justice of the Supreme Court Presiding.

In the Matter of the Application of
CLARK J. GEBMAN,

Petitioner,

ORDER AND JUDGEMENT
RJI # 01-96-ST7120
INDEX NO. 6262-96

For a Judgment Pursuant to Article 78 of
The Civil Practice Law and Rules

-against-

HONORABLE GEORGE PATAKI, GOVERNOR OF THE STATE OF NEW YORK,
MR. BRADFORD RACE AS SECRETARY TO THE GOVERNOR OF THE STATE OF NEW YORK, THE OFFICE OF REAL PROPERTY SERVICES, MR. THOMAS GRIFFEN AS EXECUTIVE DIRECTOR OF THE NEW YORK STATE OFFICE OF REAL PROPERTY SERVICES, MR. RICHARD SINNOTT AS COUNSEL TO NEW YORK STATE OFFICE OF REAL PROPERTY SERVICES, HONORABLE DENNIS VACCO, ATTORNEY GENERAL OF THE STATE OF NEW YORK

Respondents,

This petitioner having initiated this Article 78 proceeding by Order to Show Cause signed by Honorable Thomas Keegan on October 11, 1996, and this matter having duly come on to be heard,

AND UPON reading the petition, verified October 10, 1996, the motion to dismiss dated October 28, 1996, the supporting papers, after due deliberation, and based upon a decision rendered on January 3, 1997, the original of which is annexed and made part of this judgment, it is hereby

ORDERED, ADJUDGED AND DECREED that respondent's motion to dismiss is granted, and the petition is hereby dismissed in its entirety without prejudice to renewal in the Court of Claims, for the reasons set forth in the January 3,, 1997 decision.

Dated: Kingston, New York
February 3, 1997

ENTER:
S/_____
VINCENT G. BRADLEY
Justice of the Supreme Court

STATE OF NEW YORK
SUPREME COURT CHAMBERS
ULSTER COUNTY COURT HOUSE
KINGSTON, N.Y. 12401

VINCENT G. BRADLEY
JUSTICE

Mr. Clark J. Gebman
783 E. 10th Street
Brooklyn, New York 11230

Maureen P. Finnegan, Esq.
Assistant Attorney General
NYS Department of Law
The Capitol
Albany, New York 12224-0341

Re: Gebman v. Pataki et al.
Albany County Special Term
RJI# 01-96-St7120
Return date: 10/25/96

To the parties:

This letter represents the decision of the Court in the above matter. In what the pro se petitioner has labeled an Article 78 proceeding, he seeks money damages in the sum of $10,000,000 against respondents based on various "causes of action" (23 in all) including "criminal restraint of trade" (first cause of action), "criminal fraud" (third cause of action) and "criminal libel" (fifth cause of action). Respondents have moved to dismiss on the grounds that this court lacks subject matter jurisdiction.

After considering the parties' submissions, the Court concludes that the motion must be granted. Although petitioner has also sought certain forms of preliminary injunctive relief, and various respondents failed to comply with his requests under FOIL, a claim ordinarily properly brought in an Article 78 proceeding, money

damages is the only relief which petitioner seeks against the respondents.

Accordingly, because it is well established that the New York State Court of Claims has exclusive jurisdiction over actions for money damages against state agencies, departments and employees for wrongs allegedly committed in their official capacity in the exercise of governmental functions (NY Const., Art6,sec.9;Court of Claims Act, sec.8 e.g. Morell v. Balasubramanian, 70 NY 2d 297), this Court is without jurisdiction to hear petitioners complaint, and this action must be dismissed without prejudice to renewal in the Court of Claims.

Ms. Finnegan shall submit a single order consistent herewith.

Very truly yours,
S_____
VINCENT G. BRADLEY
Justice of the Supreme Court

Erratta

Page	Paragraph	Line	Replace	With
i	2	5	2nd can	
i	2	7	relief's	relief
5	2	1	citizens	citizen's
6	2	7	clearing	clearly
7	2	2	offices	office's
9	1	4	that	than
9	1	5	understanding the	understanding that the
12	2	3	addrees	address
13	4	3	confront	create
13	4	9	citizens	citizen's
17	3	2	nay	may
18	5	1	license" expense	license" at an
23	1	4	relief's	relief
24	5	6	far	fair
25	1	10	clear	clearly
26	2	2	sources patently	sources is patently
28	1	2	and an a	and a